

March 9, 1978

LB 920, 701

SENATOR DUIS: Senator Barnett, as I keep repeating I will cooperate with you 100% and if you think it is better on the other one, I'll put it on that one. We are doing our best to try and figure out how now.

SENATOR BARNETT: Okay, fine. I would move for the advancement of 920.

SENATOR SAVAGE: Any discussion? Hearing none the question is the advancement of LB 920. All those in favor vote aye, those opposed vote nay. Senator Savage voting aye. Please vote.

CLERK: Senator Savage voting aye.

SENATOR SAVAGE: Record.

CLERK: 28 ayes, 0 nays on the advancement of the bill Mr. President.

SENATOR SAVAGE: LB 920 is advanced. The next bill is 701.

CLERK: Read LB 701

SENATOR SAVAGE: The Chair recognizes Senator Barnett.

SENATOR BARNETT: I would explain the bill at this time and I would move for the advancement of LB 701, but this is the bill I think Senator Duis should bring in his amendment, where he would like to attempt to put his 555. But I will explain the bill and we can take Herb's amendment on here after we get done. This 701 is the committee bill that would eliminate the confusing language dealing with sexual assault. It has some problems over the past year or two, some of the courts that the second offense had two penalties in it and it was confusing and some judges wouldn't use it because of that. The definition of sexual penetration would also...is construed to be broadly enough to include within the criminal provisions that there was a problem with the definition and with questions as far as the penetration was concerned as to what we was using in the criminal assault laws. We have tried to change the second degree penalty to clarify second degree assault. What we did was make a third degree out of it. We have second now and third. Now, basically if you will look at the bill or at the synopsis what it does is that it says that second degree sexual assault....what it does on page 3 of 701, if you will notice down at the bottom we take starting with line 14 and we say sexual assault shall be in the second degree and is a Class III felony if the act shall have caused serious personal injury to the victim and this is without penetration. That is second degree. Then we separate and make a third class, and it is a Class I misdemeanor if the act shall not have caused serious personal injury to the victim or no penetration. Now this is basically one of the confusing issues and the confusing elements in the second degree penalty section of the law today, according to the courts. We thought that it was plainly clear. So, we have made it plainer to them. We have not changed penalties in any way shape or form, but what we do is to separate the two so that there is now second degree and a third degree. Both of them are without penetration, one is with bodily injury and one is not with bodily injury. Second degree will be with bodily injury, no penetration, third degree is no penetration, no bodily injury. The penalty does not change any other thing.